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OFFICE OF PETITIONS

In re Application of
Andrus et al.
Application No. 10/072,551
Filed: February 7, 2002
Attorney Docket No. 12587-004001

DECISION DISMISSING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 2, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **DISMISSED AS MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on February 5, 2003. A review of the file record discloses that a Notice to Rescind was received in the USPTO on March 20, 2003.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(iii)) the nonpublication request **within forty-five (45) of a counterpart application being filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. *See* Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, a Notice to Rescind was filed within forty-five (45) days of the filing date of a counterpart application in an eighteen-month publication country. Therefore, since receipt in the USPTO of the request to rescind within forty-five (45) days of the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, the petition fee of \$1300.00 is being credited to Deposit Account No. 06-1050 as previously authorized.

This application is being forwarded to Technology Center 3600 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-0482.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy